

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

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JAN 27 2012

SUNBELT CHLOR ALKALI PARTNERSHIP

Complainant.

v.

Docket No. NOR 42130

NORFOLK SOUTHERN RAILWAY COMPANY

Defendant

&

UNION PACIFIC RAILWAY COMPANY

Defendant

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NORFOLK SOUTHERN RAILWAY COMPANY'S PETITION FOR SUBPOENA

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Dated: January 27, 2012

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SURFACE TRANSPORTATION BOARD**

SUNBELT CHLOR ALKALI PARTNERSHIP

Complainant,

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NORFOLK SOUTHERN RAILWAY COMPANY

and

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Defendants.

PETITION FOR SUBPOENA

Pursuant to 49 U.S.C. § 721(c) and 49 C.F.R. § 1117.1, Norfolk Southern Railway Company ("NS") respectfully petitions the Board to issue a subpoena directed to Oxy Vinyls, LP ("OxyVinyls") and Occidental Chemical Company ("OxyChem"). The subpoena is narrowly tailored to discover information relevant to Complainant SunBelt Chlor Alkali Partnership's ("SunBelt's") ability to establish the jurisdictional prerequisite for its rate complaint: that there are no effective intermodal alternatives to the challenged movement. Specifically, OxyVinyls operates a La Porte, Texas plant that receives and issues shipments of chlorine from SunBelt; OxyChem is a sister company of OxyVinyls that operates a facility on adjacent property.¹ SunBelt has relied on "information and belief" allegations about OxyVinyls and OxyChem to support its claims that OxyVinyls does not have access to barge transportation and therefore that

¹ OxyVinyls and OxyChem are both wholly-owned subsidiaries of Occidental Petroleum Corporation. See <http://www.oxy.com/OurBusinesses/Chemicals/Pages/Overview.aspx>.

barge transportation of the issue movement is not a feasible alternative to rail transportation. The information sought by the proposed Subpoena will test whether SunBelt's "information and belief" are supported by the facts.² The Subpoena requests documents that are highly relevant to a critical jurisdictional issue in this proceeding, and it has been narrowly tailored to minimize the burden on OxyVinyls and OxyChem. The Board should issue the proposed Subpoena.

I. BACKGROUND

SunBelt's complaint challenges the reasonableness of rates for the transportation of chlorine produced at its McIntosh, Alabama facility to an OxyVinyls facility located in La Porte, Texas. SunBelt's McIntosh facility is located near the Tombigbee River, and it has access to barge transportation: indeed, SunBelt ships caustic soda from McIntosh via barge. *See* Exhibit 2 at 12 (SunBelt's Responses to NS's First Set of Requests for Admission, Interrogatories, and Requests for Production of Documents). Like SunBelt's McIntosh facility, OxyVinyls' La Porte, Texas facility is located near a navigable waterway: the Houston Ship Channel.³ Because actual or potential barge transportation can be effective competition for rail transportation,⁴ NS posed several discovery requests to SunBelt exploring the feasibility of barge loading at McIntosh and barge unloading at La Porte. *See* NS's First Set of Requests for Admission, Interrogatories and Requests for Production of Documents (served Sept. 22, 2011). SunBelt responded by admitting that its McIntosh facility has access to barge transportation for caustic soda shipments but

² The proposed Subpoena is attached as Exhibit 1.

³ A map demonstrating the proximity of the OxyVinyls La Porte Facility to the Houston Ship Channel is available at this link: <http://g.co/maps/9afjn>. Indeed, the satellite map depicts a number of barges moving through this active shipping lane and several nearby barge docks and terminals (including the Vopak Deer Park Terminal located northwest of the OxyVinyls facility).

⁴ *See, e.g., E.I. du Pont de Nemours & Co. v. CSX Transp., Inc.*, STB Docket No. NOR 42110, at 4-5 (served June 30, 2008) (finding that complainant's regular use of barges to transport chlorine constituted effective competition).

denying that it currently has the necessary infrastructure to load barges with chlorine at McIntosh. See Exhibit 2 at 16. SunBelt further asserted that OxyVinyls' La Porte facility was unable to receive barges – despite its proximity to prominent shipping lanes. SunBelt claimed that OxyVinyls' facility was “not directly adjacent to a body of water” because “[u]pon information and belief, other entities affiliated with Occidental Chemical own the property that is between the OxyVinyls' [sic] facility and the Houston Ship Channel.” *Id.* at 17. SunBelt further claimed that “upon information and belief, no infrastructure exists that connects the receiver to a barge facility.” *Id.*

II. THE BOARD SHOULD ISSUE THE REQUESTED SUBPOENA.

Whether SunBelt can demonstrate that there is no effective competition for the movement at issue is a critical jurisdictional question in this case, and an important aspect of that question is OxyVinyls' potential to receive issue shipments via barge. While the source for SunBelt's “information and belief” that OxyVinyls does not currently have access to barge transportation is not clear, it cannot be denied that the best information about OxyVinyls' capacity to receive barges is in OxyVinyls' possession, custody, and control. It is similarly clear that OxyChem is best equipped to answer whether OxyChem affiliates are impeding OxyVinyls' potential barge access. Limited discovery of OxyVinyls and OxyChem is necessary to shed light on these important issues, and the Board should issue the attached subpoena.

49 U.S.C. § 721(c) gives the Board authority to subpoena records related to a Board proceeding. The Board has exercised this statutory authority to subpoena third parties in several rate reasonableness cases, and indeed it issued a subpoena in the *DuPont* litigation last month. See *E.I. DuPont de Nemours & Co. v. Norfolk Southern Ry. Co.*, STB Docket No. NOR 42125, at 1 (served Dec. 9, 2011); *Arizona Pub. Serv. Co. & PacifiCorp v. Burlington Northern & Santa*

Fe Ry. Co., STB Docket No. NOR 41185, at 1 (served Dec. 23, 2003); *Wisconsin Power & Light Co. v. Union Pac. R.R. Co.*, STB Docket No. NOR 42051, at 2-3 (served June 21, 2000). The Board considers requests for subpoenas on a case-by-case basis, and it requires subpoenas to be narrowly drawn so that the burden of obtaining the information does not outweigh its value. See *Wisconsin Power & Light Co.* at 3-4; *Otter Tail Power Co. v. Burlington Northern & Santa Fe Ry. Co.*, STB Docket No. NOR 42071, at 5 (served Nov. 15, 2002).

A third party subpoena is warranted here. There is no doubt that whether or not the OxyVinyls facility potentially can receive chlorine via barge is a significant jurisdictional question in this case. And there is no doubt that OxyVinyls itself is the best source for whether it can do so. Likewise, OxyChem itself (not SunBelt's "information and belief") is the best source for whether OxyChem facilities actually interfere with OxyVinyls' ability to access barge transportation.

SunBelt's assertion that it currently does not have the capacity to load chlorine barges at McIntosh does not diminish the relevance of discovery about OxyVinyls' capacity to receive barges at La Porte. The Board has recognized that the potential for a shipper to construct a viable barge option that does not currently exist can be a constraint on a railroad's rates. See *Seminole Electric Cooperative, Inc. v. CSX Transp., Inc.*, STB Docket No. NOR 42110 (May 19, 2010) (ordering oral argument to address issue of whether shipper's ability to construct barge facilities constituted effective competition). Here, even accepting SunBelt's representations that the McIntosh facility does not currently have the infrastructure to load chlorine barges, it remains to be seen whether SunBelt can demonstrate that construction of the necessary infrastructure could not be part of a cost-effective alternative to rail service. At this early stage of the proceedings, discovery into whether OxyVinyls can receive barge shipments is plainly

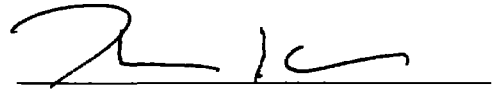
appropriate. Indeed, it would be unfair to allow SunBelt to base its market dominance arguments in this case on “information and belief” assertions about OxyVinyls without allowing reasonable discovery into OxyVinyls’ potential capacity to receive barge shipments.

The information in the Subpoena attached as Exhibit 1 is relevant to this case and narrowly tailored to discover information in the control of OxyVinyls and OxyChem. Specifically, the Subpoena requests are limited to three areas: (1) whether the OxyVinyls and OxyChem La Porte facilities have used barge transportation or have access to barge transportation; (2) whether OxyVinyls or OxyChem have studied the potential to construct or expand barge facilities at La Porte; and (3) maps, diagrams and schematics of the La Porte facilities for use in evaluating the potential to construct new or expanded barge delivery infrastructure. Responsive information to each of these requests should be readily available to OxyChem and OxyVinyls and should not require an unduly burdensome search. And the protective designations under the Board’s September 6, 2011 protective order are amply sufficient to protect any information that OxyChem or OxyVinyls deem to be sensitive or confidential. The Board should exercise its statutory authority here and issue the attached Subpoena.

* * *

For the above reasons, NS asks the Board to issue a Subpoena directed to OxyChem and OxyVinyls in the form attached as Exhibit 1.

Respectfully submitted.

A handwritten signature in black ink, appearing to read "G. Paul Moates", is written over a horizontal line.

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Counsel to Norfolk Southern Railway Company.

Dated: January 27, 2012

CERTIFICATE OF SERVICE

I hereby certify that on this 27th day of January, 2012, I caused a copy of Norfolk Southern Railway Company's foregoing Petition for Subpoena to be served on the following parties by first class mail, postage prepaid or more expeditious method of delivery:

Jeffrey O. Moreno
Jason R. Tutrone
Thompson Hine LLP
1920 N Street, NW, Suite 800
Washington, DC 20036
Counsel for SunBelt Chlor Alkali Partnership

Michael L. Rosenthal
Matthew J. Connolly
Covington & Burling LLP
1201 Pennsylvania Avenue, N.W.
Washington, DC 20004
Counsel for Union Pacific Railroad Company

Copies of this Petition for Subpoena also were served by Federal Express on the registered agents for service of process for Oxy Vinyls, LP and Occidental Chemical Corporation, and on the general counsel of OxyChem: Scott A. King, 5005 LBJ Freeway, Dallas, TX 75244-6119.



Eva Mozena Brandon

EXHIBIT 1

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

SUNBELT CHLOR ALKALI PARTNERSHIP

Complainant.

v.

NORFOLK SOUTHERN RAILWAY COMPANY

and

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Docket No. NOR 42130

SUBPOENA

Pursuant to 49 U.S.C. § 721, the Surface Transportation Board hereby issues this Subpoena directing Occidental Chemical Company ("OxyChem") and Oxy Vinyls, LP ("OxyVinyls") to produce the documentary evidence specified herein for use in the above-captioned proceeding. Part I sets forth instructions for complying with this Subpoena, and Part II sets forth definitions used in this Subpoena. Part III specifies the documents that are sought by this Subpoena.

I. Instructions

1. The documentary evidence requested in this Subpoena shall be produced within thirty days of service of the Subpoena on OxyChem and OxyVinyls, unless otherwise agreed by counsel to the parties. OxyChem and OxyVinyls should produce responsive documents to counsel for Defendant Norfolk Southern Railway Company, at the offices of Sidley Austin LLP, 1501 K Street, N.W., Washington, D.C. 20005.

2. Responsive documents that are confidential or highly confidential may be produced in accordance with the terms of the Surface Transportation Board's September 6, 2011 Protective Order in the above-captioned proceeding.

3. This Subpoena encompasses all information and documents that are in your possession, custody, and control or that are available or accessible to you, including information and documents available to (1) all parents, subsidiaries, affiliates, or business entities you own or control; (2) any of your agents, consultants, attorneys (to the extent not privileged), experts, investigators, representatives, or any other person or persons acting for you or on your behalf; and (3) other third parties from which you may obtain such information.

II. Definitions

1. "Document" is used in its broadest sense as defined by 49 C.F.R. § 1114.30(a)(1).

2. "La Porte Facilities" means all facilities owned and/or operated by OxyChem and/or OxyVinyls located at or near La Porte, TX, including the Battleground Chlor-Alkali Plant and the La Porte VCM Plant.

3. "OxyVinyls" means Oxy Vinyls, LP, a subsidiary of Occidental Petroleum Corporation and the receiver of the Issue Movement at La Porte, TX.

4. "OxyChem" means Occidental Chemical Company, a subsidiary of Occidental Petroleum Corporation.

5. "You" and "your" refer to OxyChem and OxyVinyls, as defined herein, including their agents, consultants and all others acting on OxyChem's and OxyVinyls' behalf or at their direction.

III. Documentary Evidence to Be Produced

1. Produce shipment records sufficient to show the following information for each barge or vessel shipment from the La Porte Facilities and all barge or vessel deliveries to the La Porte Facilities from January 1, 2009 through the present:

- a. Commodity shipped;
- b. Date of shipment;
- c. Volume, weight, or quantity shipped; and
- d. Origin and destination.

2. Produce shipment records sufficient to show the following information for each barge or vessel shipment from January 1, 2009 through the present that was either (i) a shipment of products, commodities, or other materials that originated at the La Porte Facilities and was transported by barge or vessel from a barge terminal or dock located within 25 miles of the La Porte Facilities; or (ii) a shipment of products, commodities, or other materials that were transported by barge or vessel to a barge or vessel terminal or dock located within 25 miles of the La Porte Facilities and were ultimately delivered to the La Porte Facilities:

- a. Commodity shipped;
- b. Date of shipment;
- c. Volume, weight, or quantity shipped;
- d. Origin and destination; and
- e. How the product was transported between the barge terminal or dock and the La Porte Facilities.

3. For the period from January 1, 2008 to the present, produce all documents relating to any analyses, studies, or reviews performed by or for you (including analyses conducted by consultants) to identify, analyze, or assess the potential to receive barge or vessel shipments at

the La Porte Facilities or at a barge or vessel terminal or dock located within 25 miles of the La Porte Facilities.

4. For the period from January 1, 2008 to the present, produce all documents relating to any analyses, studies, or reviews performed by or for you (including analyses conducted by consultants) to identify, analyze, or assess the potential to construct, expand, relocate, or reconfigure infrastructure (including docks, slips, and piers) related to either (i) the ability to receive barge or vessel shipments at the La Porte Facilities; or (ii) the ability to transport commodities or other materials between the La Porte Facilities and any barge or vessel terminals or docks located within 25 miles of the La Porte Facilities.

5. Produce detailed maps, diagrams, schematics, and site plans for the La Porte Facilities, including any dock facility, barge slip, terminal, or loading or unloading infrastructure that could be used in the water transportation of any product to or from the La Porte Facilities.

6. Produce any photographs, videos, site plans, or schematics for barge or vessel docks, slips, or facilities necessary to load or unload barges or vessels at the La Porte Facilities, including any site plans or schematics for potential facilities that do not currently exist (whether or not you currently intend to construct such facilities).

EXHIBIT 2

BEFORE THE
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COMPLAINANT'S OBJECTIONS AND RESPONSES TO
DEFENDANT NORFOLK SOUTHERN RAILWAY COMPANY'S FIRST SET OF
REQUESTS FOR ADMISSION, INTERROGATORIES, AND REQUESTS FOR
PRODUCTION OF DOCUMENTS

Complainant, Sunbelt Chlor Alkali Partnership ("Sunbelt"), hereby submits its Objections and Responses to Defendant Norfolk Southern Railway Company's ("NS's") First Set of Requests for Admission, Interrogatories, and Requests for Production of Documents ("Discovery Requests"). Sunbelt's responses to the Discovery Requests are based upon information presently known. Because Sunbelt continues to investigate the facts and information relating to the issues in this case, Sunbelt reserves the right to modify and/or supplement any of its responses as the existence of additional responsive information becomes known. Portions of Sunbelt's responses have been designated {Confidential} or {{Highly Confidential}} in accordance with the Protective Order in this proceeding.

The following General Objections, Objections to Definitions, and Objections to Instructions are incorporated into the specific response and/or objection to each Interrogatory and Request for Production of Documents.

GENERAL OBJECTIONS

The following General Objections are incorporated into the specific response and/or objection to each Discovery Request.

1. Sunbelt objects to each Interrogatory and Request for Production to the extent that it seeks information protected from disclosure by any applicable privilege, quasi-privilege, doctrine, or any other protection from discovery or disclosure, including, but not limited to, the attorney-client privilege and the attorney work-product doctrine. Any production of privileged or otherwise-protected information or documents is inadvertent and shall not constitute a waiver of any claim or privilege or other protection. Sunbelt reserves the right to demand that any inadvertently produced privileged information be returned to it and that all copies in NS's possession, and that of its counsel, consultants, or other agents, be destroyed.

2. Sunbelt objects to each Interrogatory and Request for Production to the extent that it seeks information that is not relevant to the subject matter at issue in this proceeding.

3. Sunbelt objects to each Interrogatory and Request for Production to the extent that it seeks information that is publicly available, that could more easily be obtained through other sources, or that is within NS's own possession, custody, or control.

4. Sunbelt objects to each Interrogatory and Request for Production to the extent that it seeks information that is not within the possession, custody, or control of Sunbelt, or otherwise kept by Sunbelt in the ordinary course of business.

5. Sunbelt objects to each Interrogatory and Request for Production to the extent that it is overbroad and/or imposes undue burdens that outweigh any probative value the information sought may have in this proceeding.

6. Sunbelt objects to each Interrogatory and Request for Production to the extent that it is vague, ambiguous, unintelligible, and/or fails to describe with reasonable particularity the information sought.

7. Sunbelt objects to each Interrogatory and Request for Production as overbroad and unduly burdensome to the extent that it seeks information and/or documents in a form that Sunbelt does not maintain in the ordinary course of business, or that are not readily available in the form requested by NS, where such information and/or documents could be developed if at all only through a special study that Sunbelt objects to performing.

8. Sunbelt objects to the production of information and documents regarding product, geographic, or indirect competition on the grounds that Interrogatories and Requests for Production or portions thereof regarding the foregoing are unduly burdensome, irrelevant, and not reasonably calculated to lead to the discovery of admissible evidence.

9. Sunbelt objects to each Interrogatory and Request for Production to the extent it attempts to impose obligations upon Sunbelt beyond those required by 49 C.F.R. Part 1114.

10. Sunbelt objects to each Interrogatory and Request for Production to the extent that it requests production of information regarding any transportation of an Issue Commodity in less than bulk quantities as overbroad, unduly burdensome, irrelevant, and not reasonably calculated to lead to the discovery of admissible evidence. Less than bulk transportation characteristics are not commensurate or similar to bulk transportation characteristics. Sunbelt will only respond as to bulk (i.e., full truckload or full railcar load) shipments.

11. Sunbelt objects to each Interrogatory and Request for Production that is not limited to a reasonable time period as overbroad and unduly burdensome. In accordance with this objection, Sunbelt's responses will cover the period from 2008 to 2010.

12. Sunbelt's production of documents or information in response to NS's interrogatories or requests for production is not an acknowledgement of the admissibility as evidence of such documents or information. Sunbelt reserves its right to object to the use of its responses to NS's discovery requests.

OBJECTIONS TO DEFINITIONS

1. Sunbelt objects to NS's definition of "all" and "any" (Definition 1) and each Interrogatory or Request for Production as overbroad and unduly burdensome to the extent that it requests identification of "all" or "any" documents that provide the source or basis of, or back up for, information sought by a particular Interrogatory or Request for Production. Sunbelt also objects on relevance grounds. For each Interrogatory and Request for Production to which Sunbelt is obligated to respond, Sunbelt will produce responsive, non-privileged information or documents that can be located in a reasonable search.

2. Sunbelt objects to NS's definition of "alternative transportation" (Definition 2) as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence in that it refers to non-bulk shipments of the Issue Commodities.

3. Sunbelt objects to NS's definition of "communication" (Definition 4) as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. This definition also creates ambiguities by giving a meaning that conflicts with the ordinary meaning of terms and phrases.

4. Sunbelt objects to NS's definition of "document" (Definition 6) as overbroad and unduly burdensome. Sunbelt further objects to the extent that the definition seeks to impose obligations on Sunbelt that are broader than, or inconsistent with, those imposed by 49 C.F.R. Part 1114. Sunbelt further objects to the inclusion in the definition of "document" of those

documents that are privileged or otherwise protected from discovery. This definition also creates ambiguities by giving a meaning that conflicts with the ordinary meaning of terms and phrases.

5. Sunbelt objects to NS's definition of "forecast" (Definition 7) to the extent that it seeks to impose obligations on Sunbelt that are broader than, or inconsistent with, those imposed by 49 C.F.R. Part 1114. Sunbelt also objects to production of "Forecasts" that are publicly available or otherwise available to NS from other sources. Furthermore, Sunbelt objects to the definition as overbroad and unduly burdensome to the extent that it includes documents or information unrelated to the issues in this proceeding. This definition also creates ambiguities by giving a meaning that conflicts with the ordinary meaning of terms and phrases.

6. Sunbelt objects to NS's definition of "identify" (Definition 8) on the basis that it is overbroad and unduly burdensome to the extent that it seeks information or documents that Sunbelt does not maintain in the ordinary course of business, that Sunbelt does not keep in the format requested, or that would require Sunbelt to undertake a special study. Sunbelt also objects to the definition as irrelevant and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it requires a person's home address and telephone number and any other personal information. Sunbelt further objects to NS's identification demand to the extent that it seeks to impose an obligation to produce documents in a manner not required by 49 C.F.R. Part 1114. Sunbelt objects to the definition "identify" when used with respect to a "document" as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence because Sunbelt has no duty to search for, gather, and catalog every document possibly implicated by an Interrogatory with the more than ten pieces of information specified as required by the definition. Sunbelt also objects to the definition of "identify" when used with respect to a "person other than a natural person," "non-written

communication,” and “act, occurrence, decision, statement, review, inspection, negotiation, communication, or other conduct” as being overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Sunbelt will respond to any Interrogatory asking it to “identify” particular documents as if it were a request for production of those documents and in accordance with 49 C.F.R. § 1114.30. This definition also creates ambiguities by giving a meaning that conflicts with the ordinary meaning of terms and phrases.

7. Sunbelt objects to NS’s definition of “including” (Definition 9) as overbroad and unduly burdensome to the extent it creates a potentially limitless field of responsive information or documents in particular discovery requests.

8. Sunbelt objects to NS’s definition of “Olin” (Definition 17) because that definition is overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Sunbelt, not Olin, is the complainant in this proceeding, and SunBelt, which is a partnership, is operated as a separate entity from Olin. Therefore, Sunbelt objects to the definition to the extent it includes Olin’s affiliates, subsidiaries, or parent, or other entities. Sunbelt further objects to the definition to the extent it encompasses any portion of Olin’s business or any Olin personnel not associated with Olin’s role as operating agent for the Sunbelt Facility. Sunbelt also objects to the extent that the definition includes business entities (and individuals acting on behalf of those entities) that do not tender or receive and have not tendered or received the Issue Commodities in bulk (*i.e.* truckload, carload) quantities. Sunbelt further objects, as overbroad, to the inclusion of “present or former controlling shareholders, officers, directors, agents, counsel, employees, advisors, consultants, divisions, departments, representatives, subsidiaries and affiliates, or any of them, and all other persons or entities acting (or who have acted) on behalf of any of them.” Sunbelt will make reasonable inquiries of those

Olin individuals most likely to possess information or documents responsive to each Interrogatory or Request for Production, and produce documents in Olin's possession, custody or control, or provide responses that pertain or relate to SunBelt and the Issue Movement.

9. Sunbelt objects to NS's definition of "person" (Definition 18) as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. This definition also creates ambiguities by giving a meaning that conflicts with the ordinary meaning of terms and phrases.

10. Sunbelt objects to NS's definition of "Sunbelt" (Definition 19) because that definition is overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Sunbelt objects to the definition to the extent it includes affiliates, subsidiaries, the parent of Sunbelt, or other entities that do not produce the Issue Commodities in the United States. Sunbelt also objects to the extent that the definition includes business entities (and individuals acting on behalf of those entities) that do not tender or receive and have not tendered or received the Issue Commodities in bulk (*i.e.* truckload, carload) quantities. Sunbelt further objects, as overbroad, to the inclusion of "present or former controlling shareholders, officers, directors, agents, counsel, employees, advisors, consultants, divisions, departments, representatives, subsidiaries and affiliates, or any of them, and all other persons or entities acting (or who have acted) on behalf of any of them." To the extent that the definition of "Olin" is subsumed within the definition of "Sunbelt," Sunbelt incorporates its objections to the definition of "Olin." Sunbelt will make reasonable inquiries of those individuals within SunBelt itself and Olin who are most likely to possess information or documents responsive to each Interrogatory or Request for Production.

PUBLIC VERSION - HIGHLY CONFIDENTIAL INFORMATION REDACTED

11. Sunbelt objects to NS's definition of "Sunbelt Facility" (Definition 20) as vague and ambiguous, because it is not clear whether the definition is limited to Sunbelt's production plant at McIntosh, Alabama, or includes the production plant of Olin within the same complex. Except as otherwise stated in response to an individual discovery request, Sunbelt has interpreted the term "SunBelt Facility" to include the entire McIntosh complex.

12. Sunbelt objects to NS's definition of "relating to" (Definition 21) as vague, overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent it encompasses any mention in any document or communication no matter how small. Sunbelt also objects on relevance grounds. Sunbelt will make reasonable inquiries into files where responsive information and documents are most likely to be found.

13. Sunbelt objects to NS's definition of "you" and "your" (Definition 23) to the extent of its objections to the definitions of "Olin" and "Sunbelt," which constitute the NS definition of "you" and "your." Sunbelt also objects because the definition, to the extent it includes Olin, creates ambiguities throughout these discovery requests where the inclusion of Olin would be non-sensical in multiple contexts.

OBJECTIONS TO INSTRUCTIONS

1. Sunbelt objects to Instruction for All Discovery Requests #2 as overbroad and unduly burdensome. Sunbelt will conduct a reasonable search for requested, responsive, non-privileged information and documents. Sunbelt objects to NS's expectation that Sunbelt will seek all information or documents "available or accessible" to Sunbelt. Sunbelt objects to the extent that information or documents are equally accessible to NS, or publicly available. Additionally, Sunbelt is not obligated to provide responses based on information or documents in the possession, custody, control of, or "available to", the long list of entities and persons

included in Instruction 2 or "other third parties." Sunbelt further objects to Instruction 2 to the extent it imposes obligations that exceed those imposed by 49 C.F.R. Part 1114.

2. Sunbelt objects to Instructions for All Discovery Requests #2 and #12, Instruction for Requests for Admission #2, Instruction for Interrogatories #1, Instruction for Requests for Production #1, and any other instruction to the extent that a response would require Sunbelt to conduct a special study or analysis that does not already exist.

3. Sunbelt objects to Instruction for All Discovery Requests #6, the Instructions for Requests for Admission, the Instructions for Interrogatories, and the Instructions for Requests for Production, and any other instruction to the extent they seek to impose obligations beyond those imposed by 49 C.F.R. Part 1114.

4. Sunbelt objects to Instructions for All Discovery Requests #7 and #11 as vague, overbroad, and unduly burdensome in their demand for the basis for withholding documents or information and refusing to answer discovery requests. Sunbelt objects to Instructions for All Discovery Requests #7 and #11 to the extent they impose obligations beyond those imposed by 49 C.F.R. Part 1114.

5. Sunbelt objects to Instruction for All Discovery Requests #8 as irrelevant, overbroad, and unduly burdensome to the extent that the instruction requires Sunbelt to provide any information about a document that is not necessary to verify its privileged status. Sunbelt further objects to Instruction 8 to the extent it imposes obligations beyond those imposed by 49 C.F.R. Part 1114.

6. Sunbelt objects to Instruction for All Discovery Requests #9 as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Additionally, Sunbelt objects because Instruction for All Discovery Requests #9 seeks irrelevant

information. Sunbelt further objects to the extent it imposes obligations beyond those imposed by 49 C.F.R. Part 1114.

7. Sunbelt objects to Instruction for All Discovery Requests #12 as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Furthermore, Sunbelt objects to the extent that compliance with Instruction for All Discovery Requests #12 would require a special study. Additionally, Sunbelt objects because the Instruction seeks irrelevant information.

8. Sunbelt objects to Instruction for All Discovery Requests #15 as overbroad and unduly burdensome to the extent it requests information and documents "to the present" given that "the present" is continually changing and responding to the present would require such a significant amount of time and effort to assemble that the burden on SunBelt of responding will far exceed the probative value of continually updated information. Sunbelt will provide responses through June 2011, which is the last month before Sunbelt filed its Complaint.

9. Sunbelt objects to Instruction for Request for Admission #5 as overbroad and on the basis of work product protection to the extent that it requires SunBelt to provide its belief about a matter of pure law.

10. Sunbelt objects to Instructions to Interrogatories #3, #4, and #5 as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Additionally, Sunbelt objects because these instructions seek irrelevant information. Sunbelt also incorporates its objections to Definition 8.

11. Sunbelt objects to Instruction for Requests for Production #1 as overbroad and unduly burdensome. Sunbelt will conduct a reasonable search for requested, responsive, non-privileged documents. Sunbelt objects to NS's expectation that Sunbelt must produce documents

based on “right[s]”, “understanding[s]”, “[ability] to use”, and the other aspects of this instruction.. Sunbelt further objects to the extent it imposes obligations beyond those imposed by 49 C.F.R. Part 1114. Sunbelt also incorporates its objections to Definition 8.

12. Sunbelt objects to Instruction for Request for Production 3 as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Additionally, Sunbelt objects to this instruction because it seeks irrelevant information and imposes obligations upon Sunbelt beyond those required by 49 C.F.R. Part 1114.

13. Sunbelt objects to Instruction for Requests for Production #5 as overbroad and unduly burdensome to the extent it applies to word processing documents that are identical to any hard copy. Sunbelt also objects to this instruction to the extent it seeks to impose an obligation to produce documents in a manner not required by 49 C.F.R. Part 1114. Sunbelt will make reasonable efforts to produce information that exists in an electronic format available to NS in a readily usable and intelligible format.

RESPONSES TO REQUESTS FOR ADMISSION

Request for Admission 1.

Admit that Olin Corporation owns all partnership interest(s) in SunBelt.

Response. Subject to its General Objections, Objections to Definitions, and Objections to Instructions, Sunbelt denies that Olin Corporation owns all partnership interests in SunBelt.

Request for Admission 2.

Admit that Olin Corporation is the real party in interest in this litigation.

Response. Subject to its General Objections, Objections to Definitions, and Objections to Instructions, Sunbelt denies that Olin Corporation is the real party in interest in this litigation.

Request for Admission 3.

Admit that Olin transports chlorine via water transportation.

Response. Subject to its General Objections, Objections to Definitions, and Objections to Instructions, SunBelt admits that Olin transports chlorine by water transportation, but only from Olin's Charleston, TN production facility.

Request for Admission 4.

Admit that the SunBelt facility at McIntosh, Alabama is located near the Tombigbee River.

Response. Subject to its General Objections, Objections to Definitions, and Objections to Instructions, SunBelt admits that the SunBelt facility at McIntosh, Alabama is located near the Tombigbee River.

Request for Admission 5.

Admit that the SunBelt facility at McIntosh, Alabama has access to barge transportation.

Response. Subject to its General Objections, Objections to Definitions, and Objections to Instructions, SunBelt admits that the SunBelt facility at McIntosh, Alabama has access to barge transportation for caustic soda only.

Request for Admission 6.

Admit that the SunBelt facility at McIntosh, Alabama has the capacity to ship chlorine via water transportation.

Response. Sunbelt objects to the term "capacity" as vague and undefined. In responding to this Request for Admission, Sunbelt construes capacity to mean "capability." Subject to its General Objections, Objections to Definitions, and Objections to Instructions, SunBelt denies that the SunBelt facility at McIntosh, Alabama has the capacity to ship chlorine via water transportation.

Request for Admission 7.

Admit that the receiver of the Issue Movement is Oxy Vinyls' LaPorte, Texas facility.

Response. Subject to its General Objections, Objections to Definitions, and Objections to Instructions, SunBelt admits that the receiver of the Issue Movement is Oxy Vinyls' LaPorte, Texas facility.

Request for Admission 8.

Admit that the receiver of the Issue Movement at LaPorte, Texas is located on the Houston Ship Channel.

Response. Subject to its General Objections, Objections to Definitions, and Objections to Instructions, SunBelt has changed the number of this Request for Admission ("RFA") from 7 to 8 to correct a numbering error made by NS. SunBelt objects to the use of the phrase "on the" as vague and ambiguous because it is subject to multiple meanings. SunBelt interprets the phrase "on the" to mean "directly adjacent to." SunBelt denies that the receiver of the Issue Movement at LaPorte, Texas is located on the Houston Ship Channel.

Request for Admission 9.

Admit that the receiver of the Issue Movement has access to barge transportation.

Response. Subject to its General Objections, Objections to Definitions, and Objections to Instructions, SunBelt has changed the number of this Request for Admission ("RFA") from 8 to 9 to correct a numbering error made by NS. Upon information and belief, SunBelt denies that the receiver of the Issue Movement has access to barge transportation.

Request for Admission 10.

Admit that the receiver of the Issue Movement has the capacity to receive chlorine via water transportation.

Response. Subject to its General Objections, Objections to Definitions, and Objections to Instructions, SunBelt has changed the number of this Request for Admission ("RFA") from 9 to 10 to correct a numbering error made by NS. Sunbelt objects to the term "capacity" as vague and undefined. In responding to this Request for Admission, Sunbelt construes capacity to mean

“capability.” SunBelt denies that the receiver of the Issue Movement has the capacity to receive chlorine via water transportation.

INTERROGATORIES

Interrogatory 1

If your response to Request for Admission No. 1 was anything other than an unqualified admission, please explain in detail the basis for your response, provide all facts you relied on for your response, and identify all documents that support your response.

Response. Sunbelt incorporates its objections to the referenced Request for Admission. SunBelt objects to this Interrogatory as vague, ambiguous, overbroad, and unduly burdensome in its use of “all facts,” which encompasses every conceivable fact including those bearing little import to the proceeding. Attempting to compile all facts would subject SunBelt to a burden that is grossly out of proportion to the value of the information sought. Subject to and without waiving any of its General Objections, Objections to Definitions, Objections to Instructions, or these specific objections, SunBelt responds that Olin Sunbelt, Inc. and Olin Sunbelt II, Inc. own all partnership interests in SunBelt. Olin Corporation, in turn, owns Olin Sunbelt, Inc. and Olin Sunbelt II, Inc.

Interrogatory 2

If your response to Request for Admission No. 2 was anything other than an unqualified admission, please explain in detail the basis for your response, provide all facts you relied on for your response, and identify all documents that support your response.

Response. Sunbelt incorporates its objections to the referenced Request for Admission. SunBelt objects to this Interrogatory as vague, ambiguous, overbroad, and unduly burdensome in its use of “all facts,” which encompasses every conceivable fact including those bearing little import to the proceeding. Attempting to compile all facts would subject SunBelt to a burden that is grossly out of proportion to the value of the information sought. Subject to and without

waiving any of its General Objections, Objections to Definitions, Objections to Instructions, or these specific objections, SunBelt responds that SunBelt owns the Issue Commodity, is the contracting party with the purchaser of the Issue Commodity, and is the ultimate payor of the freight on the Issue Movement. Pursuant to an agreement between Olin and Sunbelt, Olin is the operating agent for Sunbelt's McIntosh facility. {{

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Interrogatory 3

If your response to Request for Admission No. 3 was anything other than an unqualified admission, please explain in detail the basis for your response, provide all facts you relied on for your response, and identify all documents that support your response.

Response. Sunbelt incorporates its objections to the referenced Request for Admission.

Subject to its General Objections, Objections to Definitions, and Objections to Instructions, SunBelt responds that no response is required.

Interrogatory 4

If your response to Request for Admission No. 4 was anything other than an unqualified admission, please explain in detail the basis for your response, provide all facts you relied on for your response, and identify all documents that support your response.

Response. Sunbelt incorporates its objections to the referenced Request for Admission.

Subject to its General Objections, Objections to Definitions, and Objections to Instructions, SunBelt responds that no response is required.

Interrogatory 5

If your response to Request for Admission No. 5 was anything other than an unqualified admission, please explain in detail the basis for your response, provide all facts you relied on for your response, and identify all documents that support your response.

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Response. Sunbelt incorporates its objections to the referenced Request for Admission. SunBelt objects to this Interrogatory as vague, ambiguous, overbroad, and unduly burdensome in its use of "all facts," which encompasses every conceivable fact including those bearing little import to the proceeding. Attempting to compile all facts would subject SunBelt to a burden that is grossly out of proportion to the value of the information sought. Subject to and without waiving any of its General Objections, Objections to Definitions, Objections to Instructions, or these specific objections, SunBelt responds that the Sunbelt Facility at McIntosh, Alabama has access to barge transportation only for caustic soda.

Interrogatory 6

If your response to Request for Admission No. 6 was anything other than an unqualified admission, please explain in detail the basis for your response, provide all facts you relied on for your response, and identify all documents that support your response.

Response. Sunbelt incorporates its objections to the referenced Request for Admission. SunBelt objects to this Interrogatory as vague, ambiguous, overbroad, and unduly burdensome in its use of "all facts," which encompasses every conceivable fact including those bearing little import to the proceeding. Attempting to compile all facts would subject SunBelt to a burden that is grossly out of proportion to the value of the information sought. Subject to and without waiving any of its General Objections, Objections to Definitions, Objections to Instructions, or these specific objections, SunBelt responds that the SunBelt facility only has the capacity to ship caustic soda via water transportation. Sunbelt does not have the infrastructure at McIntosh to load chlorine onto barges. SunBelt will provide further responsive information by making available for inspection business records or other documents from which the answer to this Interrogatory can be derived or ascertained, to the extent they can be located by a reasonable search. *See* 49 C.F.R. § 1114.26.

Interrogatory 7

If your response to Request for Admission No. 7 was anything other than an unqualified admission, please explain in detail the basis for your response, provide all facts you relied on for your response, and identify all documents that support your response.

Response. Sunbelt incorporates its objections to the referenced Request for Admission.

SunBelt objects to this Interrogatory as vague and ambiguous to the extent that it refers to two RFA Nos. 7. As to the first RFA 7, as renumbered by SunBelt, above, no response to this Interrogatory is required. As to the second RFA 7, which SunBelt has renumbered as RFA 8, SunBelt responds that the Oxy Vinyls' LaPorte, Texas facility is not located on property that is adjacent to the Houston Ship Channel. Upon information and belief, other entities affiliated with Occidental Chemical Company own the property that is between the Oxy Vinyls' facility and the Houston Ship Channel.

Interrogatory 8

If your response to Request for Admission No. 8 was anything other than an unqualified admission, please explain in detail the basis for your response, provide all facts you relied on for your response, and identify all documents that support your response.

Response. Sunbelt incorporates its objections to the referenced Request for Admission.

SunBelt objects to this Interrogatory as vague and ambiguous to the extent that it could refer to multiple RFAs due to a numbering error by NS. SunBelt interprets this Interrogatory as referring to RFA 8, as originally numbered by NS. Subject to and without waiving any of its General Objections, Objections to Definitions, Objections to Instructions, or these specific objections, SunBelt responds that the receiver's property is not directly adjacent to a body of water and, upon information and belief, no infrastructure exists that connects the receiver to a barge facility. See also, Sunbelt's response to Interrogatory No. 7.

Interrogatory 9

If your response to Request for Admission No. 9 was anything other than an unqualified admission, please explain in detail the basis for your response, provide all facts you relied on for your response, and identify all documents that support your response.

Response. Sunbelt incorporates its objections to the referenced Request for Admission.

SunBelt objects to this Interrogatory as vague and ambiguous to the extent that it could refer to multiple RFAs due to a numbering error by NS. SunBelt interprets this Interrogatory as referring to RFA 9, as originally numbered by NS. Subject to and without waiving any of its General Objections, Objections to Definitions, Objections to Instructions, or these specific objections, SunBelt responds that the receiver's property is not directly adjacent to a body of water and, upon information and belief, no infrastructure exists that connects the receiver to a barge facility.

Interrogatory 10

Identify all facts that support your allegation in Paragraph 14 of the Complaint that "NS and UP possess market dominance" with respect to the Issue Movement.

Response. SunBelt objects to this Interrogatory because it requires SunBelt to perform a special study to assess intermodal competition and variable costs between Origins and Destinations. SunBelt objects to this Interrogatory as a premature and inappropriate demand for SunBelt to disclose its litigation position before the submission of opening evidence. SunBelt objects to this Interrogatory as calling for a legal conclusion to which no response is necessary. SunBelt objects to the reference to "all facts" as overbroad and unduly burdensome to the extent it requires SunBelt to unearth every conceivable fact that may support its position, including facts that SunBelt itself has not yet identified. Subject to and without waiving any of its General Objections, Objections to Definitions, Objections to Instructions, or these specific objections, SunBelt responds that trucks are not a feasible or safe alternative for the Issue Movement because of volume and distance, a second rail carrier does not exist to handle the Issue Movement from Issue Origin to Issue Destination, neither the Issue Origin nor the Issue

Destination have the infrastructure to load or unload barges, and neither the Issue Origin nor the Issue Destination are connected by pipeline to each other or to Alternative Transportation.

SunBelt further responds that it will provide additional evidence of NS's possession of market dominance at the appropriate time.

Interrogatory 11

Identify all facts that support your allegation in Paragraph 16 of the Complaint that "[t]here is a lack of effective competition from non-rail modes for the Issue Movement."

Response. SunBelt objects to this Interrogatory because it requires SunBelt to perform a special study to assess competition from non-rail modes for the Issue Movement. SunBelt objects to this Interrogatory as a premature and inappropriate demand for SunBelt to disclose its litigation position before the submission of opening evidence. SunBelt objects to this Interrogatory as calling for a legal conclusion to which no response is necessary. SunBelt objects to the reference to "all facts" as overbroad and unduly burdensome to the extent it requires SunBelt to unearth every conceivable fact that may support its position, including facts that SunBelt itself has not yet identified. Subject to and without waiving any of its General Objections, Objections to Definitions, Objections to Instructions, or these specific objections, SunBelt refers to its response to Interrogatory No. 10.

Interrogatory 12

Identify and describe with specificity all Alternative Transportation, transportation options, modes, and alternatives other than (or in addition to) NS rail service that you have considered, studied, analyzed, studied, reviewed, evaluated or are aware of, which you might use to transport the Issue Commodity between the Issue Origin and either the Issue Destination or the Issue Interchange (including intermodal or multimodal transportation, and including options that would or could require the construction of additional infrastructure or facilities such as truck transloading facilities, rail build outs or barge or vessel docks), and identify and describe with specificity any document(s) and/or communication(s) relating thereto.

Response. SunBelt objects to this Interrogatory to the extent it requires SunBelt to undertake a special study by gathering and presenting information in a format other than in which it is kept, such as the request to “describe with specificity.” SunBelt objects to the Interrogatory to the extent that it seeks documents or communications related to the Alternative Transportation that are protected by the attorney-client privilege, the work product doctrine, or other protection from discovery. SunBelt objects to the ambiguous, vague, and burdensome use of the phrases “is aware of” and “might use” to the extent they require SunBelt to describe Alternative Transportation options not considered by SunBelt. SunBelt objects to the use of “might use” as calling for speculation. Subject to and without waiving its General Objections, Objections to Definitions, Objections to Instructions, or these specific objections, SunBelt responds that it will produce or make available for inspection business records or other documents from which the answer to this Interrogatory can be derived or ascertained. *See* 49 C.F.R. § 1114.26. *See also*, Sunbelt’s response to Interrogatory No. 11.

Interrogatory 13

Identify and describe with specificity all Alternative Transportation, transportation options, modes, and alternatives other than (or in addition to) NS rail service that you have used, considered, analyzed, studied, reviewed, evaluated, or are aware of, to transport the Issue Commodity between the Issue Origin and either the Issue Destination or the Issue Interchange.

Responses. SunBelt objects to this Interrogatory to the extent it is duplicative of Interrogatory 12. SunBelt incorporates herein its objections and response to Interrogatory 12.

Interrogatory 14

Identify and describe in detail all occasions since 2006 when you have used a form of transportation other than rail service to transport the Issue Commodity between any destinations, including: the specific mode or type of transportation; the identity of the person or entity that provided that transportation; the date(s) you used such other mode(s) of transportation; the circumstances or reasons surrounding the use of the other mode(s) of transportation; the rate charged to you for that alternative transportation, and, if different, your net cost per ton for that alternative transportation; and whether or not such

other mode of transportation is a competitive alternative to rail service (and if not, state specifically and in detail why not).

Responses. Sunbelt objects to this Interrogatory as vague, and ambiguous in its use of the phrase “between any destinations,” and interprets this phrase to mean any “between any origin and destination.” SunBelt objects to this Interrogatory as overbroad, unduly burdensome, and irrelevant to the extent it includes origins or destinations outside of the continental United States. SunBelt objects to the Interrogatory as seeking irrelevant information, such “as net cost per ton.” SunBelt objects to the extent the numerous subparts of the Interrogatory would require SunBelt to undertake a special study and are unduly burdensome, including the request to provide “circumstances or reasons surrounding the use of the other mode(s)” and “the net cost per ton for that alternative transportation.” Attempting to answer all subparts of the Interrogatory would subject SunBelt to a burden that is grossly out of proportion to the value of the information sought. SunBelt objects to the vague and ambiguous use of terms such as “circumstances or reasons surrounding.” SunBelt objects to the term “competitive alternative” as vague and ambiguous and interprets the term to mean “effective competition” as used in 49 USC § 10701(a). SunBelt objects to this Interrogatory as overbroad, unduly burdensome, and irrelevant to the extent it requests information about non-bulk shipments. Sunbelt also objects to the portion of the Interrogatory that asks “whether or not such other mode of transportation is a competitive alternative to rail service” as overbroad, irrelevant and unduly burdensome to the extent it seeks information for transportation other than the Issue Movement. Subject to and without waiving its General Objections, Objections to Definitions, Objections to Instructions, or these specific objections, SunBelt responds that it will produce or make available for inspection business records or other documents from which the answer to this Interrogatory can be derived or ascertained. *See* 49 C.F.R. § 1114.26.

Interrogatory 15

Identify and describe with specificity all solicitations, requests for proposals, bids or offers, that you have issued, published, solicited or otherwise communicated relating (in whole or in part) to transportation of the Issue Commodity.

Response. SunBelt objects to this Interrogatory as demanding irrelevant information to the extent it demands information not related to the Issue Movements, which has no bearing on the market dominance or stand alone cost aspects of this proceeding. SunBelt objects to this Interrogatory to the extent it requires SunBelt to undertake a special study by gathering and presenting information in a format other than in which it is kept, such as the request to "describe with specificity all solicitations, requests for proposals, bids or offers." SunBelt objects to the extent that the requested information is already in NS's possession, such as solicitations, requests for proposals, bids or offers that SunBelt has made to NS. Subject to and without waiving its General Objections, Objections to Definitions, Objections to Instructions, or these specific objections, SunBelt responds that it will produce or make available for inspection business records or other documents from which the answer to this Interrogatory can be derived or ascertained. *See 49 C.F.R. § 1114.26.*

Interrogatory 16

Identify and describe with specificity all studies, analyses, projections, communications, and documents relating to the potential to ship the Issue Commodity by truck, including references to any alleged obstacles to transporting the Issue Commodity by truck.

Response. SunBelt objects to this Interrogatory as being cumulative of other discovery requests, including Interrogatories 12 and 13. SunBelt objects to this Interrogatory to the extent it requires SunBelt to undertake a special study by gathering and presenting information in a format other than in which it is kept, such as the request to "describe with specificity." SunBelt objects to this Interrogatory to the extent it requests documents or communications protected by the work product doctrine or attorney client privilege. SunBelt objects to the vague and

ambiguous phrases “potential” and “alleged obstacles” as subjective terms without any identification of whose opinion is sought. SunBelt objects to this Interrogatory as unduly burdensome insofar as it requests SunBelt to identify and describe all communications, which includes routine and daily email communications. Subject to and without waiving its General Objections, Objections to Definitions, Objections to Instructions, or these specific objections, SunBelt responds that it will produce or make available for inspection business records or other documents from which the answer to this Interrogatory can be derived or ascertained. *See* 49 C.F.R. § 1114.26.

Interrogatory 17

Identify and describe with specificity all studies, analyses, projections, communications, and documents relating to the potential to ship the Issue Commodity by barge, including references to any alleged obstacles to transporting the Issue Commodity by barge.

Response. SunBelt objects to this Interrogatory as being cumulative of other discovery requests, including Interrogatories 12 and 13. SunBelt objects to this Interrogatory to the extent it requires SunBelt to undertake a special study by gathering and presenting information in a format other than in which it is kept, such as the request to “describe with specificity.” SunBelt also objects to the vague and ambiguous phrases “potential” and “alleged obstacles” as subjective terms without any identification of whose opinion is sought. SunBelt objects to this Interrogatory as unduly burdensome insofar as it requests SunBelt to identify and describe all communications, which includes routine and daily email communications. Subject to and without waiving its General Objections, Objections to Definitions, Objections to Instructions, or these specific objections, SunBelt responds that it will produce or make available for inspection business records or other documents from which the answer to this Interrogatory can be derived or ascertained. *See* 49 C.F.R. § 1114.26.

Interrogatory 18

Identify and describe with specificity all studies, analyses, projections, communications, and documents relating to the potential to ship the Issue Commodity by pipeline, including references to any alleged obstacles to transporting the Issue Commodity by pipeline.

Response. SunBelt objects to this Interrogatory as being cumulative of other discovery requests, including Interrogatories 12 and 13. SunBelt objects to this Interrogatory to the extent it requires SunBelt to undertake a special study by gathering and presenting information in a format other than in which it is kept, such as the request to "describe with specificity." SunBelt also objects to the vague and ambiguous phrases "potential" and "alleged obstacles" as subjective terms without any identification of whose opinion is sought. SunBelt objects to this Interrogatory as unduly burdensome insofar as it requests SunBelt to identify and describe all communications, which includes routine and daily email communications. SunBelt objects to this Interrogatory as overbroad, unduly burdensome, and irrelevant to the extent it seeks information not limited to the Issue Movement. Subject to and without waiving any of its General Objections, Objections to Definitions, Objections to Instructions, or these specific objections, SunBelt responds that it is not aware of any studies regarding the potential to ship the Issue Commodity by pipeline for the Issue Movement.

Interrogatory 19

Identify and describe with specificity all data and information regarding truck traffic to and from the SunBelt Facility since January 1, 2006 including without limitation:

- (a) number of trucks;
- (b) loaded truck weights;
- (c) origins and destinations of truck shipments;
- (d) volumes shipped to each such origin and destination;
- (e) commodities, products or freight delivered or shipped; and
- (f) any applicable weight, traffic type of volume restrictions or limitations on roads, highways, or streets within a 75-mile radius of the SunBelt Facility that might be used by trucks moving freight to or from the SunBelt Facility.

Response. SunBelt objects to this Interrogatory as irrelevant to the extent it is not limited to the Issue Commodity. SunBelt objects to this Interrogatory as overbroad and unduly burdensome to the extent it seeks "all data and information regarding truck traffic," which includes a vast amount of data not related to the ability of trucks to transport the Issue Commodity. Attempting to compile all data regarding truck traffic would subject SunBelt to a burden that is grossly out of proportion to the value of the information sought. Furthermore, SunBelt objects to subpart (f), which seeks public information that can be obtained from public sources by NS just as easily as by SunBelt. Subject to and without waiving any of its General Objections, Objections to Definitions, Objections to Instructions, or these specific objections, SunBelt responds that there was no truck traffic of the Issue Commodity to and from the SunBelt Facility since January 1, 2006.

Interrogatory 20

Identify and describe with specificity all data and information regarding barge traffic to and from the SunBelt Facility since January 1, 2006 including without limitation:

- (a) number of barges;
- (b) origins and destinations of barge shipments;
- (c) volumes shipped to each such origin and destination; and
- (d) commodities, products or freight delivered or shipped.

Response. SunBelt objects to this Interrogatory as irrelevant to the extent it is not limited to the Issue Commodity. SunBelt objects to this Interrogatory as overbroad and unduly burdensome to the extent it seeks "all data and information regarding barge traffic," which includes a vast amount of data not related to the ability of barges to transport the Issue Commodity. Subject to and without waiving any of its General Objections, Objections to Definitions, Objections to Instructions, or these specific objections, SunBelt responds that that there was no barge traffic of the Issue Commodity to or from the SunBelt Facility since January 1, 2006.

Interrogatory 21

Identify and describe with specificity all studies, analyses, projections, communications, and documents relating to the potential to ship chlorine via water transportation, including references to any real, potential, or alleged obstacles to transporting the Issue Commodity by barge, ship, or vessel.

Response. SunBelt objects to this Interrogatory to the extent it is duplicative of Interrogatory 17. SunBelt objects to this Interrogatory to the extent it requires SunBelt to undertake a special study by gathering and presenting information in a format other than in which it is kept, such as the request to “describe with specificity.” SunBelt also objects to the vague and ambiguous phrases “potential” and “alleged obstacles” as subjective terms without any identification of whose opinion is sought. SunBelt objects to this Interrogatory as unduly burdensome insofar as it requests SunBelt to identify and describe all communications, which includes routine and daily email communications. Subject to and without waiving its General Objections, Objections to Definitions, Objections to Instructions, or these specific objections, SunBelt responds that it will produce or make available for inspection business records or other documents from which the answer to this Interrogatory can be derived or ascertained. *See* 49 C.F.R. § 1114.26.

Interrogatory 22

Identify and describe with specificity all proposals, bids or offers received by or communicated to you relating to Alternative Transportation of all or any part of the Issue Movement (including the rate or price offered or proposed for such transportation and all other material terms of any such offer, proposal or bid).

Response. SunBelt objects to this Interrogatory to the extent it requires SunBelt to undertake a special study by gathering and presenting information in a format other than in which it is kept, such as the request to “describe with specificity” and include “all other material terms.” SunBelt objects to the ambiguous and vague use of the phrase “all other material items” as it does not know what NS believes is material and the scope of potentially material documents

may far exceed that which NS desires, placing an undue burden on SunBelt. Subject to and without waiving its General Objections, Objections to Definitions, Objections to Instructions, or these specific objections, SunBelt responds that it will produce or make available for inspection business records or other documents from which the answer to this Interrogatory can be derived or ascertained. *See* 49 C.F.R. § 1114.26.

Interrogatory 23

Identify and describe with specificity any discussions, negotiations, or other communications between you and any rail carrier other than NS concerning or relating to provision (or potential provision) of transportation service for the Issue Commodity, including without limitation: possible options to “build-in” (or “build out”) a line of a railroad from another carrier’s rail line; or possible use of “trackage” or “haulage” rights or some other arrangement whereby another rail carrier would use NS’s rail line(s).

Response. SunBelt objects to this Interrogatory overbroad, unduly burdensome, and irrelevant to the extent it is not limited to transportation of the Issue Commodity to or from the SunBelt Facility. SunBelt objects to this Interrogatory to the extent it is not limited to communications related to Alternative Transportation. SunBelt objects to this Interrogatory as unduly burdensome insofar as it requests SunBelt to identify and describe all communications, which includes routine and daily email communications. Subject to and without waiving any of its General Objections, Objections to Definitions, Objections to Instructions, or these specific objections, SunBelt responds that no responsive documents exist.

Interrogatory 24

Identify and describe with specificity the land ownership and surface easement rights held by you in the area within a 10-mile radius of the Issue Origin, the Issue Destination, and the Issue Interchange.

Response. SunBelt objects to this Interrogatory as overbroad and irrelevant to the extent it includes the interchange and destination. SunBelt further objects to this Interrogatory as vague, because SunBelt does not know the precise location of the interchange. Subject to and

without waiving any of its General Objections, Objections to Definitions, Objections to Instructions, or specific objections, SunBelt responds that it will produce or make available for inspection business records or other documents from which the answer to this Interrogatory can be derived or ascertained. *See* 49 C.F.R. § 1114.26.

Interrogatory 25

Do you contend that the Issue Rate materially affects the profitability of the SunBelt Facility or the products it produces? If so, provide financial information sufficient to show the financial condition of the SunBelt Facility including, without limitation, revenues, costs of goods sold, administrative expenses, net income, historical and expected capital expenditures, and labor expenses.

Response. SunBelt objects to this Interrogatory as overbroad and irrelevant to the issues in this proceeding. Subject to its General Objections, Objections to Definitions, and Objections to Instructions, SunBelt does not intend to contend that the Issue Rate materially affects the profitability of the SunBelt Facility or the products it produces.

Interrogatory 26

Do you contend that the Issue Rate will or may cause the closure of the SunBelt Facility or the curtailment of production at that facility? If so, provide financial information sufficient to show the financial condition of the SunBelt Facility including, without limitation, revenues, costs of goods sold, administrative expenses, net income, historical and expected capital expenditures, and labor expenses.

Response. SunBelt objects to this Interrogatory as overbroad and irrelevant to the issues in this proceeding. Subject to its General Objections, Objections to Definitions, and Objections to Instructions, SunBelt does not intend to contend that the Issue Rate will or may cause the closure of the SunBelt Facility or the curtailment of production at that facility.

Interrogatory 27

For the Issue Movement, identify and describe with specificity all contracts for the purchase or sale of the Issue Commodity that is currently in force or scheduled to take effect in the next two years. For each such contract identify:

- (a) the parties to the contract;

- (b) date the contract was executed;
- (c) effective date of the contract;
- (d) term of the contract and expiration date;
- (e) any minimum volume requirement;
- (f) any maximum volume limitation;
- (g) price terms;
- (h) options for expenses; and
- (i) terms describing whether and under what circumstances SunBelt or another party may terminate the contract.

Response. Subject to and without waiving any of its General Objections, Objections to Definitions, or Objections to Instructions, SunBelt responds that it will produce or make available for inspection business records or other documents from which the answer to this Interrogatory can be derived or ascertained. *See* 49 C.F.R. § 1114.26.

Interrogatory 28

Identify and describe in detail your current policies and procedures for handling and shipment of the Issue Commodity.

Response. Subject to and without waiving any of its General Objections, Objections to Definitions, or Objections to Instructions, SunBelt responds that it will produce or make available for inspection business records or other documents from which the answer to this Interrogatory can be derived or ascertained. *See* 49 C.F.R. § 1114.26.

Interrogatory 29

State whether you have conducted, caused to be conducted, or have access to any studies, reports or other documents analyzing the costs of utilizing privately owned or leased rail cars for any Issue Movement or the costs of maintaining privately owned or leased rail cars for movement of any product encompassed in the Issue Movement. If the answer to this Interrogatory is affirmative, identify and describe in detail the scope of each such study, report, analysis, or other document, the methodology utilized therein and the specific results and conclusions of each such study, report, analysis, or document.

Response. SunBelt objects to this Interrogatory as overbroad and unduly burdensome to the extent it requests SunBelt to “describe in detail” the “scope”, “methodology”, and “specific results and conclusions” of the requested documents. Subject to and without waiving any of its

General Objections, Objections to Definitions, Objections to Instructions, or these specific objections, SunBelt responds that it will produce or make available for inspection business records or other documents from which the answer to this Interrogatory can be derived or ascertained. *See* 49 C.F.R. § 1114.26.

Interrogatory 30

For each, if any, rail car owned or leased by you, and for each of the calendar years 2008 to the present, identify the following:

- (a) The owner or lessee of the car;
- (b) The location(s) from which the hoppers or gondolas are assigned;
- (c) Car initial and number;
- (d) Source of car;
- (e) Car model or type;
- (f) Tare weight;
- (g) Date of purchase or lease;
- (h) Original cost plus additions and betterments;
- (i) Description of financing vehicle (e.g., equipment trust);
- (j) Debt rate as a percent;
- (k) Finance terms (in years);
- (l) Annual depreciation;
- (m) Accrued depreciation;
- (n) If leased, whether capital or operating lease;
- (o) If capital lease, the capitalized value of the lease by car or car group. If group of cars, identify the number (by initial and number) and aggregate dollars;
- (p) If an operating lease, the quarterly, semi-annual, or annual lease payment by car or car group covering the term of the lease. If a group of cars, identify the number (by initial and number) and aggregate dollars;
- (q) The movement history of each car, including location, miles traveled between stations (loaded and empty), and the time and date of arrival at each station; and
- (r) The history (on a year-to-year basis) of mileage allowance payments or other compensation received by you (or other owner or lessor) for the use of each car.

Response. SunBelt objects to subpart (q) because it requests movement history for each railcar, which is irrelevant to the market dominance and rate reasonableness determinations in this proceeding. SunBelt objects to this Interrogatory to the extent it requires SunBelt to undertake a special study by gathering and presenting information in a format other than in

which it is kept. SunBelt objects to subpart (d) as vague and ambiguous in its use of "source" and will interpret "source" to mean "owner." Subject to and without waiving its General Objections, Objections to Definitions, Objections to Instructions, or these specific objections, SunBelt responds that it will produce or make available for inspection business records or other documents from which the answer to this Interrogatory can be derived or ascertained to the extent they exist or can be located by a reasonable search. See 49 C.F.R. § 1114.26.

Interrogatory 31

For each of the cars identified in response to Interrogatory 30, identify maintenance and/or repair expenses by individual car initial and number (owned and leased), incurred by you for each of the calendar years 2008 to the present.

Response. SunBelt objects to this Interrogatory to the extent it requires SunBelt to undertake a special study by gathering and presenting information in a format other than in which it is kept. Subject to and without waiving any of its General Objections, Objections to Definitions, Objections to Instructions, or these specific objections, SunBelt will provide responsive information, which may be in the form of business records, pursuant to 49 C.F.R. § 1114.26(b), to the extent such information exists or can be recalled.

Interrogatory 32

For each of the cars identified in response to Interrogatory 30, identify the total car unit-miles corresponding to the maintenance and repair expenses identified in Interrogatory 29 (i.e., by individual car initial and number, or car type or car series) for each of the calendar years 2008 to the present.

Response. SunBelt objects to this Interrogatory to the extent it requires SunBelt to undertake a special study by gathering and presenting information in a format other than in which it is kept, such as by correlating unit-miles to maintenance and repair records. Subject to and without waiving any of its General Objections, Objections to Definitions, Objections to

Instructions, or these specific objections, SunBelt responds that it does not track the total car unit miles corresponding to maintenance and repair expenses identified in Interrogator 29.

Interrogatory 33

Identify any and all studies, reports, or analysis done by or for you or received or reviewed by you, concerning or related to development, or potential development, of transportation infrastructure, including development that would allow use (or greater use) of any transportation facility (including, without limitation, any port, depot, station, or other type of facility) for delivery of product(s) or production inputs that could, or might, be transported to or from the SunBelt Facility.

Response. SunBelt objects to this Interrogatory as irrelevant and overbroad to the extent it seeks information not related to the Issue Commodity, Issue Movement, and Issue Facilities, which is not relevant to the market dominance and rate reasonableness determinations in this proceeding. SunBelt objects to this Interrogatory as overbroad to the extent it seeks the identity of "any and all" of the requested documents, which requires the identification of every conceivable document, including documents no longer in SunBelt's possession. Subject to and without waiving any of its General Objections, Objections to Definitions, Objections to Instructions, or these specific objections, SunBelt responds that it will produce or make available for inspection business records or other documents from which the answer to this Interrogatory can be derived or ascertained. *See* 49 C.F.R. § 1114.26.

Interrogatory 34

If you claim that any customer requirement or preference forecloses your ability to deliver the Issue Commodity to that customer by any particular mode of transportation, describe any and all such customer requirements or preferences in detail.

Response. SunBelt objects to this Interrogatory as irrelevant to the extent it seeks information not related to the Issue Movement, which is not relevant to the market dominance and rate reasonableness determinations in this proceeding. Subject to and without waiving its General Objections, Objections to Definitions, Objections to Instructions, or these specific

objections, SunBelt responds that its customer, Oxy Vinyls, at La Porte, Texas, cannot receive barge deliveries of chlorine, and that {

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B. Requests for Production

Request for Production 1

Produce all documents, data, or information identified or referenced in your responses to NS's Interrogatories, and all documents, data, or other information you reviewed, consulted, considered, or relied upon in developing or preparing those responses.

Response. SunBelt incorporates its objections to each of the NS Interrogatories herein.

SunBelt objects to this Request for Production ("RFP") as being duplicative of other discovery requests and to the extent it calls for the production of documents that are privileged or protected from discovery. Subject to and without waiving its General Objections, Objections to Definitions, Objections to Instructions, or these specific objections, SunBelt refers NS to the Interrogatory responses.

Request for Production 2

Produce all documents that underlie, support, analyze, explain, relate to, or concern your claim that NS possesses "market dominance" with respect to the transportation of the Issue Movement, including the allegations in Paragraphs 14-16 of the Complaint.

Response. SunBelt objects to this Request for Production ("RFP") as overbroad and unduly burdensome, especially in its request for "all documents that underlie, support, analyze, explain, relate to, or concern" NS's market dominance. SunBelt objects to this RFP to the extent the RFP encompasses documents which are privileged or otherwise protected from production. SunBelt incorporates by reference its objections to Interrogatory 10. Subject to and without waiving any of its General Objections, Objections to Definitions, Objections to Instructions, or these specific objections, SunBelt refers NS to its response to Interrogatory 10, business records

produced in response to the interrogatories, and other documents produced in response to these RFPs.

Request for Production 3

For the period from January 1, 2000 to the present, produce all documents relating to transportation options or alternatives for the Issue Movement, including all documents relating to:

- (s) The costs and feasibility of transporting the Issue Commodity, in whole or in part, using Alternative Transportation, including all comparisons of the costs and feasibility of those transportation alternatives with those of NS's and UP's rail transportation service;
- (t) Any correspondence with any potential carriers of the Issue Commodity by truck, barge, vessel, ship, or other mode of transportation (or combination of modes);
- (u) All analyses, studies, or reviews performed by or for you (including analyses conducted by consultants) to identify, analyze, assess or compare Alternative Transportation, including the costs and/or feasibility of any and all such Alternative Transportation.

Response. SunBelt objects to this RFP as overbroad and unduly burdensome, especially in its request for "all documents relating to transportation options or alternatives" to the extent this includes routine correspondence or duplicates documents produced in response to other discovery requests. SunBelt objects to the extent this RFP encompasses documents which are privileged or otherwise protected from production. SunBelt objects to this RFP as overbroad and unduly burdensome to the extent it seeks documents created prior to 2008. SunBelt objects to this RFP as overbroad, unduly burdensome, and irrelevant to the extent it requests documents related to "transportation options or alternatives" and interprets such phrase to mean "Alternative Transportation." Subject to and without waiving any of its General Objections, Objections to Definitions, Objections to Instructions, or these specific objections, SunBelt responds that it has not located any documents responsive to items (t) and (u) after conducting a reasonable search for such documents and SunBelt will produce documents in response to item (s) to the extent not

otherwise produced and they exist and can be found by a reasonable search. SunBelt also refers NS to business records produced in response to the Interrogatories, and other documents produced in response to these RFPs.

Request for Production 4

For the period from January 1, 2008 to the present, produce all documents relating to transportation options or alternatives for the Issue Movement from any source or origin to the Issue Destination or the Issue Interchange including all reviews or analyses of options (or potential options) for transporting the Issue Commodity from alternative sources or origins other than the Issue Origin.

Response. SunBelt objects to this requests as irrelevant to the extent it requests evidence of geographic competition. SunBelt objects to this RFP as overbroad, unduly burdensome, and irrelevant to the extent it requests documents related to “transportation options or alternatives” and interprets such phrase to mean “Alternative Transportation.” SunBelt objects to this RFP as overbroad and unduly burdensome, especially in its request for “all documents relating to transportation options or alternatives” to the extent this includes routine correspondence or documents produced in response to other discovery requests. SunBelt objects to the extent this RFP encompasses documents which are privileged or otherwise protected from production. SunBelt objects to this RFP as overbroad, unduly burdensome, and irrelevant to the extent it requests documents created before 2008.

Request for Production 5

For the period from January 1, 2008 to the present, produce all bills, invoices, bills of lading, waybills, or other billing documents issued to, or received by, you for transportation of the Issue Movement using Alternative Transportation.

Response. SunBelt objects to this RFP as overbroad and unduly burdensome in its demand for actual billing documents that are duplicative of electronic billing data, which can be more readily provided at less expense to SunBelt. Subject to and without waiving any of its General Objections, Objections to Definitions, Objections to Instructions, or these specific

objections, Sunbelt responds that it has not been able to locate such documents after conducting a reasonable search.

Request for Production 6

Produce: (1) maps or diagrams showing; and (2) documents or other information describing or evidencing: any land ownership, access or easement rights or licenses, and other rights to or interests in real property, facilities or improvements held by (or usable by) you in the area within a 10-mile radius of the Issue Origin, the Issue Destination, or the Issue Interchange.

Response. SunBelt objects to this RFP as duplicative of Interrogatory No. 24 and hereby incorporates its objections to that Interrogatory. SunBelt objects to this RFP as overbroad, unduly burdensome, and irrelevant to the extent it includes the Issue Destination and interchange points between NS and other rail carriers. Subject to and without waiving any of its General Objections, Objections to Definitions, Objections to Instructions, or specific objections, SunBelt will produce responsive documents to the extent they exist and can be found by a reasonable search.

Request for Production 7

Produce detailed maps or diagrams of the SunBelt Facility, including any storage and handling facility or equipment location(s) and capabilities.

Response. SunBelt objects to this RFP as overbroad, unduly burdensome, vague, and ambiguous in its call for "detailed maps or diagrams," which could encompass all levels of detail, including information not relevant to market dominance or stand-alone cost. Subject to and without waiving any of its General Objections, Objections to Definitions, Objections to Instructions, or these specific objections, SunBelt will produce responsive documents to the extent they exist and can be found by a reasonable search.

Request for Production 8

Produce all documents relating to any review, assessment, or analysis of NS rail transportation rates that you (including your agents or consultants) conducted or

performed, including any comparisons of rates charged or offered by NS with rates offered or charged by other transportation providers; analysis of the cost of rail transportation as a proportion of your overall costs; and all presentations you made to NS during the course of transportation contract negotiations between the parties (including all data, information, calculations, and analyses underlying or supporting such documents or presentations).

Response. SunBelt objects to this RFP as irrelevant to the extent it seeks documents related to transportation other than the Issue Movement and analyses "of the cost of rail transportation as a proportion of SunBelt's overall costs." SunBelt objects to this RFP as overbroad and unduly burdensome to the extent it seeks "any review, assessment, or analysis." SunBelt objects to this RFP to the extent it encompasses documents which are privileged or otherwise protected from production. Subject to and without waiving any of its General Objections, Objections to Definitions, Objections to Instructions, or these specific objections, SunBelt will produce documents related to the Issue Movement to the extent not otherwise produced in response to other discovery requests and to the extent they exist and can be found by a reasonable search. SunBelt also refers NS to business records produced in response to the Interrogatories, and other documents produced in response to these RFPs.

Request for Production 9

Produce each study or analysis, and all workpapers and other supporting documents, calculations, and data, prepared by or on behalf of you referring to the reasonableness of the rates charged (or proposed to be charged) by NS or to the stand-alone costs of service for the transportation of the Issue Movement. For each such study or analysis, produce all underlying workpapers and source documents, including all computer-readable data containing inputs to or the results of such study or analysis.

Response. SunBelt objects to this RFP to the extent it requests privileged information. SunBelt objects to this RFP as vague and ambiguous in its use of "reasonableness" and interprets such term as it is used at 49 U.S.C. § 10701. Subject to and without waiving any of its General Objections, Objections to Definitions, Objections to Instructions, or specific objections, SunBelt does not have possession, custody or control of any non-privileged, responsive documents.

Request for Production 10

Produce any and all truck, barge, vessel, multimodal, or intermodal transportation contracts, agreements, circulars, or other pricing arrangements between you and carriers other than NS that (1) are or were in effect at any time from January 1, 2008 to the present; and (2) applied or could apply, whether or not considered by you, to all or any part of a movement of the Issue Commodity.

Response. SunBelt objects to this RFP as overbroad, unduly burdensome, and irrelevant to the extent it seeks documents not related to the Issue Movement, which are irrelevant to the market dominance and rate reasonableness determinations in this proceeding. SunBelt objects to this RFP as vague and overbroad in its use of the phrase "could apply." SunBelt interprets this phrase to mean "actually considered by SunBelt." SunBelt objects to this RFP to the extent it encompasses documents in the possession, custody, or control of third parties. Subject to and without waiving any of its General Objections, Objections to Definitions, Objections to Instructions, or these specific objections, SunBelt will produce documents in response to this RFP to the extent they exist and can be found by a reasonable search. SunBelt also refers NS to business records produced in response to the Interrogatories and to other documents produced in response to these RFPs.

Request for Production 11

Produce each Forecast, study or analysis (including, but not limited to, strategic studies, long-range planning studies, analyses of options, management audit studies or reports and testimony), and all workpapers and other supporting documents and data, prepared by or on behalf of you during the time period from January 1, 2008 to the present, which refer to, or are related to, the impact or potential impact of your compliance with applicable state and federal environmental, safety, or security laws, regulations or requirements (including any requirements or obligations imposed by court order, litigation settlement or contract) on any of the following:

- (a) SunBelt;
- (b) The SunBelt Facility;
- (c) The volume or amount of the Issue Commodity generated, produced, or consumed at the SunBelt Facility;

- (d) The relative costs to generate, produce, or consume the Issue Commodity at the SunBelt Facility as compared with the generation of production costs of chemical manufacturers or sellers other than SunBelt; and
- (e) SunBelt's ability or potential ability to compete for present or future sales of the Issue Commodity with chemical manufacturers or sellers other than SunBelt.

Response. SunBelt objects to subparts (a), (b), (d) and (e) of the RFP because it seeks information and documents which are irrelevant to the issue of market dominance or the rate reasonableness standards of the Board as described in the *Coal Rate Guidelines, Nationwide*, Ex Parte No. 347 (Sub-No. 1), 1 I.C.C.2d 520 (1985), as revised in later ICC and Board decisions. SunBelt objects to this RFP as overbroad and unduly burdensome. Sunbelt objects to the term "Sunbelt Facility" to the extent it includes Olin facilities at McIntosh. Subject to and without waiving any of its General Objections, Objections to Definitions, Objections to Instructions, or specific objections, SunBelt will produce documents in response to subpart (c) of this request.

Request for Production 12

Produce any and all studies, analyses, reviews, or assessments of (i) the market for the Issue Commodity; (ii) competition faced by the SunBelt facility for production, sale, or supply of the Issue Commodity to customers or potential customers; or (iii) the effect of rail rates on the competitive position of the SunBelt facility and its products in the markets in which it competes.

Response. SunBelt objects to this RFP as overbroad, unduly burdensome, and irrelevant to the extent it requests records unrelated to market dominance or stand-alone cost, such as the records regarding the market for the Issue Commodity, competition faced by the SunBelt facility, and the effect of rail rates on the competitive position of the SunBelt facility.

Request for Production 13

Produce each study or analysis, and all workpapers and other supporting documents, calculations, and data, prepared by or on behalf of you referring to the total delivered costs of production of the Issue Commodity experienced by you and your competitors, and the proportion of the total delivered costs represented by rail or other transportation rates charged (or proposed to be charged) by NS and/or other carriers. For each such

study or analysis, produce all underlying workpapers and source documents, including all computer-readable data containing inputs to or the results of such study or analysis.

Response. SunBelt objects to this RFP as overbroad, unduly burdensome, and irrelevant because the total delivered costs of the Issue Commodity are not related to market dominance or stand-alone cost. SunBelt objects to this RFP as unduly burdensome and duplicative to the extent it requests information already provided in response to other discovery requests, such as RFP 5.

Request for Production 14

To the extent not produced in response to other discovery requests, produce documents relating to the SunBelt Facility identifying, or that could be used to identify, the following:

- (a) Track capacity in feet;
- (b) Schematics showing the trackage configuration with both the track that NS owns (or jointly owns) and the SunBelt-owned track clearly identified;
- (c) Annual weeks, days per week, and hours per day, of chlorine loading operations;
- (d) Average amount per car loaded; and
- (e) Loading capacity.

Response. Subject to and without waiving any of its General Objections, Objections to Definitions, or Objections to Instructions, SunBelt will produce responsive documents.

Request for Production 15

Produce all documents referring to any of the following subjects:

- (a) The reasonableness of the level of the rates charged by NS for the transportation of the Issue Commodity;
- (b) The effect or impact of the level of the rates charged by NS for the transportation of the Issue Commodity on the productive levels at SunBelt Facility; and
- (c) Market rates for rail transportation of the Issue Commodity.

Response. SunBelt objects to this Interrogatory as irrelevant to the extent it seeks information not related to the Issue Movement, which is irrelevant to the market dominance and rate reasonableness determinations in this proceeding. SunBelt objects to subpart (a) of this RFP

as vague and ambiguous in its use of “reasonableness” and interprets such term as it is used at 49 U.S.C. § 10701. SunBelt objects to subpart (b) of this Interrogatory as irrelevant to market dominance and stand-alone costs. SunBelt objects to this RFP as overbroad and unduly burdensome, especially in its request for “all documents” which includes routine correspondence that merely refers to a rate or duplicates other discovery requests. SunBelt objects to this RFP to the extent it encompasses documents which are privileged or otherwise protected from production. SunBelt objects to the ambiguous use of the term “Market Rates” in subpart (c) as vague and ambiguous. Subject to and without waiving any of its General Objections, Objections to Definitions, Objections to Instructions, or these specific objections, SunBelt responds that no non-privileged documents exist in response to subpart (a); no responsive documents exist in response to subpart (b); and SunBelt will respond to subpart (c) by producing rail contracts.

Request for Production 16

Produce all videos and other documents showing or relating to loading and/or unloading operations for any transportation mode at the SunBelt Facility.

Response. SunBelt objects to this RFP as being irrelevant in that it is not limited to the loading and unloading of Issue Commodity. Subject to and without waiving any of its General Objections, Objections to Definitions, Objections to Instructions, or specific objections, SunBelt will produce responsive documents with respect to Issue Commodity to the extent they exist and can be found by a reasonable search.

Request for Production 17

Produce all videos and other documents relating to policies, procedures, and practices for safe and/or secure handling of the Issue Commodity.

Response. SunBelt objects to this RFP as overbroad because it requests “all” documents, including those that do not set forth policies or procedures. Subject to and without waiving any of its General Objections, Objections to Definitions, Objections to Instructions, or specific

objections, SunBelt will produce responsive documents to the extent they exist and can be found by a reasonable search.

Request for Production 18

Produce documents sufficient to describe the ownership and operational structure of SunBelt, including but not limited to:

- (a) Partnership agreements, any amendments thereto, and any other organizational documents or bylaws;
- (b) Agreements related to the transactions described in paragraph 1 of the Complaint; and
- (c) The operating agreement between SunBelt and Olin described in paragraph 1 of the Complaint.

Response. Subject to and without waiving any of its General Objections, Objections to Definitions, or Objections to Instructions, SunBelt will produce responsive documents to the extent they exist and can be found by a reasonable search.

Request for Production 19

Produce all documents referring to any sale or acquisition of land (improved or unimproved) or any interest in land (including easements or licenses) completed by you in the "SARR States," as defined in Complainant's First Set of Discovery Requests to Defendants (dated September 6, 2011), during the period from January 1, 2008 to the present including documents showing the location of the parcel, size of the parcel, sale or acquisition price, a description of any improvements to the parcel, date of sale, and any characteristics of the parcel such as land use, utilities, access and topography.

Response. SunBelt objects to this RFP as overbroad and unduly burdensome, especially in its request for "all documents referring to" the covered sales/acquisitions, and its request for documents showing "any characteristics of the parcel." Subject to and without waiving any of its General Objections, Objections to Definitions, Objections to Instructions, or specific objections, SunBelt will produce responsive documents to the extent they exist and can be found by a reasonable search.

Request for Production 20

Produce all appraisals or other land valuations prepared by or for you, or in your possession, custody or control, at any time during the period from January 1, 2008 to the present, for any real property or real estate parcels located in the "SARR States," as defined in Complainant's First Set of Discovery Requests to Defendants (dated September 6, 2011).

Response. Subject to and without waiving any of its General Objections, Objections to Definitions, or Objections to Instructions, SunBelt will produce responsive documents to the extent they exist and can be found by a reasonable search.

Request for Production 21

Produce each Forecast, study or analysis, and all workpapers and other supporting documents and data, prepared or reviewed by or on behalf of you or in your possession, custody or control during the time period from January 1, 2008 to the present, which refers to, or is related to, the level, volume or rate of change in any of the following:

- (a) The expected or anticipated production capacity of the SunBelt facility by calendar month, year or other time period;
- (b) The expected or anticipated production requirements or commitments of the SunBelt facility by calendar month, year or other time period;
- (c) The expected or anticipated volume of demand for chlorine produced or sold by the SunBelt facility, by calendar month, year or other time period;
- (d) The expected or anticipated volume of sales (in dollars) of chlorine produced or sold by the SunBelt facility, by calendar month, year or other time period;
- (e) The location, amount and duration of any production or transportation constraints affecting or potentially affecting the transportation of products produced by the SunBelt facility;
- (f) The expected or anticipated number of tons or volume of product(s) to be transported by rail for the SunBelt facility, by calendar month, year or other time period; and
- (g) The expected or anticipated level of railroad rates for the transportation of product produced by the SunBelt facility, by calendar month, year or other time period.

Response. SunBelt objects to this request to the extent it is duplicative of other discovery requests. Sunbelt objects to the term "Sunbelt Facility" to the extent it includes Olin facilities at McIntosh. Subject to and without waiving any of its General Objections, Objections

to Definitions, Objections to Instructions, or specific objections, SunBelt will produce responsive documents to the extent they exist and can be found by a reasonable search.

Request for Production 22

Produce all documents related to any studies, reports, or analysis (including drafts) done by or for you or received or reviewed by you, concerning or related to (1) rail transportation infrastructure at the SunBelt Facility; (2) the physical limitations of that infrastructure (including capacity limitations, track configuration constraints, and lack of sufficient storage); (3) service disruptions caused in whole or in part by the physical limitations of rail infrastructure at the SunBelt Facility; and/or (4) potential plans or projects to expand, improve, and/or reconfigure rail infrastructure at the SunBelt Facility.

Response. SunBelt objects to this RFP as overbroad and unduly burdensome because it requests "all" documents, including routine correspondence and other documents bearing little import to the proceeding. Subject to and without waiving any of its General Objections, Objections to Definitions, Objections to Instructions, or specific objections, SunBelt will produce responsive documents to the extent they exist and can be found by a reasonable search.

Request for Production 23

Produce any photographs, videos, site plans, or schematics for barge docks, barge slips, and facilities necessary to load or unload barges at the SunBelt Facility and/or the Issue Destination.

Response. SunBelt objects to this RFP as overbroad, unduly burdensome, and irrelevant to the extent it requests records regarding the Issue Destination, which NS does not serve and SunBelt does not control. SunBelt objects to this RFP to the extent it requests records that are not in the custody, possession, or control of SunBelt. SunBelt objects to this RFP as vague, ambiguous, overbroad, and unduly burdensome, especially in its use of "any," which encompasses every conceivable record, including those bearing little import to the proceeding. Ascertaining and providing the records sought will subject SunBelt to a burden that is grossly out of proportion to the value of such records. Subject to and without waiving any of its General Objections, Objections to Definitions, Objections to Instructions, or specific objections, SunBelt

will produce responsive documents to the extent they exist and can be found by a reasonable search.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'J. Moreno', is written over a horizontal line.

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*Attorneys for SunBelt Chlor-Alkali
Partnership*

Dated: October 24, 2011

Certificate of Service

I hereby certify that on this 24th day of October 2011, I served the foregoing Complainant's Objections and Responses to Defendant Norfolk Southern Railway Company's First Set of Requests for Admission, Interrogatories, and Requests for Production of Documents via e-mail and first class mail upon:

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